UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,711	07/19/2001	Eric Sven-Johan Swildens	SPEE0005	2091

22862 7590 11/16/2006

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

EXAMINER	
JEAN, FRANTZ B	

ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/909,711	SWILDENS ET AL.	
	Examiner	Art Unit	
	Frantz B. Jean	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-26 and 28-62* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-26 and 28-62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/03,10/05,09/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to applicants' arguments filed on 09/06/06. Claims 1-5, 7-26, and 28-62 are pending in the application.

Priority to provisional US Patent Application Number 60/166,906 filed November 22 1999 is not valid for the claims of the instant application because the specification of the provisional placation does not contain any details regarding the limitations of the claims of the instant application. Accordingly, the reference cited below is valid.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 12/29/03, 10/03/05, and 09/06/06 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-26 and 28-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Bradley et al. (hereinafter Bradley) US application number 7,082,463.

As per claims 1 and 22, Bradley teaches a process and a program storage medium readable by a computer for a determining server performance metrics in a network (see fig 7, abstract), comprising the steps of: providing service metric probe means resident on a server for determining the service availability and metric measurements of types of services provided by a content delivery machine (col 5 lines 8-16); providing latency probe means resident on a server for determining the latency of various servers within said network (col. 14 lines 1-67); wherein said service metric probe means consults a configuration file containing each DNS name in its area and the set of services associated with each DNS name (fig 10; col. 10 lines 4-20; col. 17 lines 1-67); wherein said services include any of: HTTP, HTTPS, FTP, streaming media, and/or generic SNMP (col. 6 lines 44-51; col. 10 lines 4-20); and wherein said latency probe means calculates the latency from its location to a client's location (col 14 lines 1-67).

As per claims 2 and 23, Bradley teaches each server in said network has a metric test associated with each service supported by each content delivery server (fig 7; col. 5 lines 8-16).

As per claims 3 and 24, Bradley teaches a service metric probe means periodically performs metric tests on content delivery servers within said service metric probe means' area, and wherein said service metric probe means records the metric results from said periodic tests (fig 7; col. 5 lines 8-16).

As per claims 4 and 25, Bradley teaches a latency probe means calculates the round trip time (inherent in Gupta latency probe) for sending a packet to a client to obtain the latency value, and wherein the round trip time tests that said latency probe means performs, includes any of: PING, UDP Reverse Name lookup, or UDP Packets to high number ports (col. 14 line 60 to col. 16 line 65).

As per claims 5 and 26, Bradley teaches a latency probe means sends a UDP Packet probe to high number ports that fail, said latency probe means resends said UDP Packet probe with a low TTL number and increments the TTL number until failure occurs, a last successful TTL number indicates partial latency data (col.14 line 60 to col. 16 line 65).

As per claims 7 and 28, Bradley teaches a service metric probe means sends an update to all DNS servers in said network that consists of all tests since the last update (col.5 lines 38-56; col. 17 line 1 to col. 18 line 65).

As per claims 8 and 29, Bradley teaches a latency probe means that updates DNS servers with the clients' latency data (col. 5 lines 38-56; col. 17 line 1 to col. 18 line 65).

As per claims 9 and 30, Bradley teaches a DNS server that uses latency data updates from said latency probe means to determine a closest content delivery server to a client

(col. 17 line 1 to col. 18 line 65).

As per claims 10 and 31, Bradley teaches a DNS server that uses said latency data updates and said service availability and metric measurements test updates to determine a best content delivery server to return for a given DNS name (col. 5 lines 38-56; col. 17 line 1 to col. 18 line 65).

As per claims 11 and 32, Bradley teaches a service metric probe means that sends a packet request to a content deliver server and receives, in response, a packet containing various metrics of the content delivery server, and wherein said service metric probe means combines the content delivery server's metrics to arrive at a load metric which is sent to at least one DNS server (fig 7; col. 5 lines 38-67).

As per claims 12 and 33, Bradley teaches a process and a program storage medium readable by a computer for a determining server performance metrics in a network (see fig 7 and abstract), comprising the steps of: providing service metric probe means resident on a server for determining the service availability and metric measurements of types of services provided by a content delivery server (col. 5 lines 8-16); providing latency probe means resident on a server for determining the latency of various servers within said network (col. 14 lines 1-67); wherein said service metric probe means sends an update to all DNS servers in said network that consists of all service availability and metric measurements since the last update (fig 10; col. 10 lines 4-20; col. 17 lines 1-67);

and wherein said latency probe means updates said DNS servers with clients' latency data (col. 5 lines 38 et seq; col. 17 line 1 to col. 18 line 65).

As per claims 13 and 34, Bradley teaches a service metric probe means that consults a configuration file containing each DNS name in its area and the set of services associated with each DNS name, and wherein said services include any of: HTTP, HTTPS, FTP, streaming media, and/or generic SNMP (col. 6 lines 44-51; col. 10 lines 4-20).

As per claims 14 and 35, Bradley teaches a latency probe means that calculates the latency from its location to a client's location (col. 10 lines 7-20).

As per claims 15 and 36, Bradley teaches each server in said network has a metric test associated with each service supported by said server (col. 5 lines 8-37).

As per claims 16 and 37, Bradley teaches a service metric probe means periodically performs metric tests on the servers within said service metric probe means' area, and wherein said service metric probe means records the metric results from said periodic tests (fig 7; col. 5 lines 8-37).

As per claims 17 and 38, Bradley teaches a latency probe means that calculates the round trip time for sending a packet to a client to obtain the latency value, and wherein

the round trip time tests that said latency probe means performs, includes any of: PING, UDP Reverse Name lookup, and/or UDP Packets to high number ports (col. 27 line 17 to col. 28 line 2.

As per claims 18 and 39, Bradley teaches when latency probe means sends a UDP Packet probe to high number ports that fail, said latency probe means resends said UDP Packet probe with a low TTL number and increments the TTL until failure occurs, the last successful TTL value will indicate the partial latency data (col.14 line 60 to col. 16 line 65).

As per claims 19 and 40, Bradley teaches a DNS server that uses said latency data updates to determine closest content delivery server to a client (col.5 lines 38-56; col. 17 line 1 to col. 18 line 65).

As per claims 20 and 41, Bradley teaches a DNS server that uses said latency data updates and said service availability and metric measurements test updates to determine a best content delivery server to return for a given DNS name (col. 5 lines 38-56; col. 17 line 1 to col. 18 line 65).

As per claims 21 and 42, Bradley teaches a service metric probe means that sends a packet request to a content deliver server and receives, in response, a packet containing various metrics of the content delivery server, and wherein said service

metric probe means combines the content delivery server's metrics to arrive at a load metric which is sent to at least one DNS server (fig 7; col. 5 lines 38-67).

Claims 43-62 disclose an apparatus that contains the same limitations as the process and method claims discussed above. Therefore, they are rejected under the same rationale.

Levine et al.US Pub Number 2002/0073199 A1; Iyer et al.US 7,058,706; and Quarterman et al US Publication Number US 2002/0099816 A1 contains limitations that are relevant to the claims limitations as written. Applicants are requested to consider the prior art of record upon responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean

FRANTZ B. JEAN
PRIMARY EXAMINER